

#10

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: David W. Bergevin Attorney Docket No.: DWBE551424  
Application No.: 09/434,353 Patent No.: 6,346,131  
Filed: November 3, 1999 Issued: February 12, 2002  
Title: FERTILIZER COMPOSITIONS FOR ADMINISTERING  
PHOSPHATES TO PLANTS

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**OFFICE OF PETITIONS**

PETITION PURSUANT TO 37 CFR 1.182 REQUESTING EXPEDITED CONSIDERATION  
OF CONCURRENTLY FILED PETITION TO ACCEPT UNAVOIDABLY DELAYED  
PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT

Seattle, Washington 98101

November 29, 2012

TO THE COMMISSIONER FOR PATENTS:

The Patentee for U.S. Patent No. 6,346,131 (the '131 Patent) hereby petitions the Director to expedite consideration of the Petition To Accept Unavoidably Delayed Payment Of Maintenance Fee In An Expired Patent (the "Reinstatement Petition"), filed concurrently herewith.

The Patentee is in the process of negotiating a purchase and sale transaction that involves the '131 Patent, and the parties are attempting to conclude the transaction before December 31, 2012. The outcome of the Reinstatement Petition is material to the transaction. Therefore, an expedited review of the Reinstatement Petition is respectfully requested.

12/11/2012 GARIAS 00000001 031740 09434353

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DWBE51424\_PETITION\_FOR\_EXPEDITED\_PROCESSING.DOC

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LAW OFFICES OF  
CHRISTENSEN O'CONNOR JOHNSON KINDNESS<sup>SM</sup>  
1420 Fifth Avenue,  
Suite 2800  
Seattle, Washington 98101  
206.682.8100

The petition fee specified in 37 CFR 1.17(f) is hereby authorized. The Director is requested to call the undersigned directly if there are any questions regarding the present petitions.

The Commissioner is hereby authorized to charge any fees which may be required or credit any overpayment to Deposit Account No. 03-1740.

Respectfully submitted,

CHRISTENSEN O'CONNOR  
JOHNSON KINDNESS<sup>PLLC</sup>



Ryan E. Dodge, Jr.  
Registration No. 42,492  
Direct Dial No. 206.695.1724

I hereby certify that this correspondence is being transmitted via facsimile to the U.S. Patent and Trademark Office, Mail Stop Petition, at facsimile number (571) 273-8300, on the below date.

Date:

November 29, 2012

David Harris

RED:lal

#9

PTO/SB/85 (03-09)

Approved for use through 03/31/2012. OMB 0651-0016

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**PETITION TO ACCEPT UNAVOIDABLY DELAYED PAYMENT OF  
MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(b))**Docket Number (Optional)  
DWBE551424Mail to: Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria VA 22313-1450  
Fax: (571) 273-8300**FAX RECEIVED**

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**OFFICE OF PETITIONS**

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

Patent Number: 6,346,131Application Number: 09/434,353Issue Date: February 12, 2002Filing Date: November 3, 1999**CAUTION:** Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number (or reissue patent number, if a reissue) and (2) the application number of the actual U.S. application (or reissue application) leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

Also complete the following information, if applicable:

The above-identified patent:

☐ is a reissue of original Patent No. \_\_\_\_\_ original issue date \_\_\_\_\_;  
original application number \_\_\_\_\_  
original filing date \_\_\_\_\_☐ resulted from the entry into the U.S. under 35 U.S.C. 371 of international application  
\_\_\_\_\_ filed on \_\_\_\_\_**CERTIFICATE OF MAILING OR TRANSMISSION (37 CFR 1.8(a))**

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is

(1) being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 OR

(2) transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

November 29, 2012

Date

  
SignatureLori A. Lewis

Typed or printed name of person signing Certificate

[Page 1 of 4]

This collection of information is required by 37 CFR 1.378(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 8 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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## 1. SMALL ENTITY

☒ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27

## 2. LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

## 3. MAINTENANCE FEE (37 CFR 1.20(e)-(g))

The appropriate maintenance fee must be submitted with this petition, unless it was paid earlier.

NOT Small Entity			Small Entity		
Amount	Fee	(Code)	Amount	Fee	(Code)
<input type="checkbox"/> \$ _____	3 ½ yr fee	(1551)	<input type="checkbox"/> \$ _____	3 ½ yr fee	(2551)
<input type="checkbox"/> \$ _____	7 ½ yr fee	(1552)	<input type="checkbox"/> \$ <u>1,450.00</u>	7 ½ yr fee	(2552)
<input type="checkbox"/> \$ _____	11 ½ yr fee	(1553)	<input type="checkbox"/> \$ _____	11 ½ yr fee	(2553)

MAINTENANCE FEE BEING SUBMITTED \$ 1,450.00

## 4. SURCHARGE

The surcharge required by 37 CFR 1.20(i)(1) of \$ 700.00 (Fee Code 1557) must be paid as a condition of accepting unavoidably delayed payment of the maintenance fee.

SURCHARGE FEE BEING SUBMITTED \$ 700.00

## 5. MANNER OF PAYMENT

- ☐ Enclosed is a check for the sum of \$ \_\_\_\_\_
- ☒ Please charge Deposit Account No. 03-1740 the sum of \$ 2,150.00
- ☐ Payment by credit card. Form PTO-2038 is attached.

## 6. AUTHORIZATION TO CHARGE ANY FEE DEFICIENCY

- ☒ The Director is hereby authorized to charge any maintenance fee, surcharge or petition fee deficiency to Deposit Account No. 03-1740

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

**7. OVERPAYMENT**

As to any overpayment made, please

☒ Credit to Deposit Account No. 03-1740

OR

☐ Send refund check

**WARNING:**

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

**8. SHOWING**

The enclosed statement will show that the delay in timely payment of the maintenance fee was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that this petition is being filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The statement must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which the patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

**9. PETITIONER(S) REQUESTS THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED.**

/Ryan E. Dodge, Jr./

Signature(s) of Petitioner(s)

November 29, 2012

Date

Ryan E. Dodge, Jr.

Typed or printed name(s)

42,492

Registration Number, if applicable

1420 Fifth Avenue, Suite 2800

Address

206.695.1724

Telephone Number

Seattle, Washington 98101

Address

**ENCLOSURES:**

- ☒ Maintenance Fee Payment
- ☒ Statement why maintenance fee was not paid timely
- ☒ Surcharge under 37 CFR 1.20(i)(1) (fee for filing the maintenance fee petition)
- ☒ Other:

Addendum to Petition to Accept Unavoidably Delayed Payment of Maintenance Fee  
Petition for Expedited Processing

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

/Ryan E. Dodge, Jr./

Signature

November 29, 2012

Date

Ryan E. Dodge, Jr.

Type or printed name

42,492

Registration Number, if applicable

STATEMENT

(In the space below, please provide the showing of unavoidable delay recited in paragraph 8 above.)

See attached Addendum.

(Please attach additional sheets if additional space is needed)

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: David W. Bergevin Attorney Docket No.: DWBE551424  
Application No.: 09/434,353 Patent No.: 6,346,131  
Filed: November 3, 1999 Issued: February 12, 2002  
Title: FERTILIZER COMPOSITIONS FOR ADMINISTERING  
PHOSPHATES TO PLANTS

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**OFFICE OF PETITIONS**

ADDENDUM TO PETITION TO ACCEPT UNAVOIDABLY DELAYED PAYMENT OF  
MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(b))

Seattle, Washington 98101

November 29, 2012

TO THE COMMISSIONER FOR PATENTS:

For the reasons stated below and supported by the documents provided herewith, applicant respectfully petitions for acceptance of the unavoidably delayed payment of the second maintenance fee and for reinstatement of U.S. Patent No. 6,346,131 (the '131 Patent).

1. Chronology

(i) In 1989, David W. Bergevin (the "Patentee") formed and founded Northwest Agricultural Products, Inc., a Washington corporation ("NAP"). (Declaration of D.W. Bergevin)

(ii) From its founding and through the date of this Petition, the Patentee has been the president and sole shareholder of NAP. (Declaration of D.W. Bergevin)

(iii) In 1999, the Patentee, through patent counsel, filed U.S. Patent Application No. 09/434,353, which issued as the '131 Patent on February 12, 2002.

(iv) In 1999, NAP was a very small company, comprising the Patentee, two full-time administrative staff, two commissioned salespersons, and 2-5 production personnel. (Declaration of D.W. Bergevin)

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- (v) The Patentee has not assigned the patent to any other party. (Declaration of D.W. Bergevin)
- (vi) NAP commercially practices the invention claimed in the '131 Patent, and it is directed to an important NAP product line. (Declaration of D.W. Bergevin)
- (vii) Upon issuance of the '131 Patent, the Patentee was advised by counsel Liebler Ivey & Connor of the requirement to pay maintenance fees to maintain the '131 Patent, and that the Patentee would be reminded as maintenance fee payment dates approached.
- (viii) On or around the issue date of the '131 Patent, office manager Kyle Hartmeier implemented a calendar docket using MS Outlook® on an office computer for tracking, among other things, the maintenance fee payment schedule for the '131 Patent. (Declaration of D.W. Bergevin)
- (xi) In October 2004, Meg Maas, née Kates ("Maas"), was hired by NAP. Maas was promoted to Strategic Administrative Assistant in 2005, and responsibility for the patent docketing system was transferred to her. (Declarations of D.W. Bergevin and M.K. Maas)
- (x) As recorded in the public records of the U.S. Patent Office, on July 5, 2005, the first maintenance fee for the '131 Patent was timely paid.
- (xi) In 2006, Maas left her position with NAP rather abruptly due to complications related to a high risk pregnancy, and Michelle Stewart ("Stewart") was hired as Strategic Administrative Specialist to replace Maas. To support a valued employee, and to provide training and the transfer of knowledge to Stewart, NAP agreed that Maas would continue to assist NAP on a part-time, as-needed basis working from home. To facilitate this arrangement, Maas was allowed to retain the computer that she used daily at NAP, after transferring company information to Stewart. (Declarations of D.W. Bergevin and M.K. Maas)



(xii) Stewart has reviewed the current docketing system and now believes that the docket dates for payment of the maintenance fees for the '131 Patent were not successfully transferred to Stewart at that time. (Declaration of M. Stewart)

(xiii) If the docketing system had operated properly and the deadline for paying the second maintenance fee had been brought to the attention of the Patentee as intended, then the Patentee would have paid the second maintenance fee. (Declaration of D.W. Bergevin)

(xiv) Stewart has recently reviewed NAP's records and has not found any reminder from its patent counsel or any other person dated after the payment of the first maintenance fee advising that the second maintenance fee for the '131 Patent was payable. (Declaration of M. Stewart)

(xv) On February 12, 2012, the window for reinstating the '131 Patent for unintentional delay in payment of the second maintenance fee closed.

(xvi) On November 16, 2012, the Patentee learned for the first time and through a third party that the second maintenance fee had not been timely paid and that the '131 Patent had expired for failure to pay the second maintenance fee. (Declaration of D.W. Bergevin)

(xvii) On November 16, 2012, the Patentee through his agent Steve Wolfe contacted his current patent firm and instructed that the undersigned immediately and diligently take steps to petition to reinstate the '131 Patent. (Declaration of D.W. Bergevin)

## 2.0 Applicable Standards

### Authority

The Patent Statute gives the Director the authority to accept a late maintenance fee any time after the grace period for paying the maintenance fee if the delay is shown to the satisfaction of the Director to have been unavoidable:

The Director may accept the payment of any maintenance fee . . . at any time after the six-month grace period if the delay is shown to the satisfaction of the Director to have been unavoidable. 35 U.S.C. 41(c)(1)

Unavoidable Delay

The applicable regulations define what may constitute an "unavoidable" delay:

Any petition to accept an unavoidably delayed payment of a maintenance fee . . . must include . . . (3) a showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely. . . . 37 CFR 1.378(b) (emphasis added)

Therefore, a finding of "unavoidable" delay does not require literal impossibility but only that reasonable care was taken to ensure timely payment of the maintenance fee.

The MPEP states, "[T]he patentee's lack of knowledge of the need to pay the maintenance fee and the failure to receive the Maintenance Fee Reminder do not constitute unavoidable delay." However, "evidence that despite reasonable care on behalf of the patentee and/or the patentee's agents, and reasonable steps to ensure timely payment, the maintenance fee was unavoidably not paid, could be submitted in support of an argument that the delay in payment was unavoidable" (MPEP 2590 I.)

The MPEP provides one example that could result in a finding that the delay in payment was "unavoidable":

an error in a docketing system could possibly result in a finding that a delay in payment was unavoidable if it were shown that reasonable care was exercised in designing and operating the system and that the patentee took reasonable steps to ensure that the patent was entered into the system to ensure timely payment of the maintenance fees. (MPEP 2590 I.)

Therefore, if reasonable care in the design and operation of a docketing system is shown, an error in the docketing system would support a finding that the delay in payment was unavoidable.

In *Ray v. Lehman*, 55 F.3d 606 34 USPQ2d 1786 (1995), the Federal Circuit confirms the appropriate standard is the reasonably prudent person standard: "in determining whether a delay in paying a maintenance fee was unavoidable, one looks to whether the party responsible for payment of the maintenance fee exercised the due care of a reasonably prudent person." *Id.* The court further acknowledges with approval, "The PTO's regulation merely sets forth how one is to prove that he was reasonably prudent, i.e., by showing what steps he took to ensure that the maintenance fee would be timely paid, and the steps taken in seeking to reinstate the patent." *Id.*

The MPEP quotes *In re Mattullath* (citation omitted) to provide guidance on the interpretation of the "reasonably prudent person" standard in determining if a delay was unavoidable (emphasis added):

The word 'unavoidable' . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.

(MPEP 711.03(c)II.C.2)

This section of the MPEP further states,

A delay resulting from an error (e.g., a docketing error) on the part of an employee in the performance of a clerical function may provide the basis for a showing of "unavoidable" delay, provided it is shown that:

- (A) the error was the cause of the delay at issue;
- (B) there was in place a business routine for performing the clerical function that could reasonably be relied upon to avoid errors in its performance; and
- (C) the employee was sufficiently trained and experienced with regard to the function and routine for its performance that reliance upon such employee represented exercise of due care.

(MPEP 711.03(c)II.C.2)

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### The Petition

The CFRs recite the requirements in a petition to reinstate a patent that expired due to failure to pay a maintenance fee:

Any petition to accept an unavoidably delayed payment of a maintenance fee . . . must include . . . (1) the required maintenance fee . . . ; (2) the surcharge . . . ; and (3) a showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly. (37 C.F.R. 1.378(b), emphasis added)

MPEP 711.03(c)II.C.2 is directed to an unavoidable delay resulting in abandonment of a pending application. However, it provides guidance applicable to the unavoidable delay in payment of a maintenance fee, and expressly identifies a docketing error as an example of an error that could be unavoidable. "[A] late maintenance fee for the unavoidable delay standard is considered under the same standard for reviving an abandoned application under 35 U.S.C. 133." (MPEP 2590 I.)

### 3.0 Analysis

The Director has the authority under 35 U.S.C. 41(c)(1) to reinstate a patent at any time if the delay is shown to the satisfaction of the Director to have been unavoidable. The Patentee respectfully petitions the Director to accept payment of the second maintenance fee and to reinstate the '131 Patent.

The reason for the delay in payment of the second maintenance fee is established in the chronology above and in the enclosed Declarations.

The Patentee, through his solely owned company NAP, hired capable personnel that were trained and tasked with implementing a docketing system to ensure payment of the maintenance fees for the '131 Patent. The fact that the docketing system was in place and could reasonably be relied upon to avoid errors in its performance, and that the employee was sufficiently trained and experienced, is evidenced by the successful and timely payment of the first maintenance fee for the '131 Patent.

Unfortunately, an unforeseen error in the docketing system resulted in the loss of data. The error is believed to have occurred in the transfer of data between personnel, which transfer was necessitated by an unexpected medical condition.

That docketing error was the sole cause of the delay in timely payment of the maintenance fee. Notwithstanding the reasonable care exercised by the Patentee in providing a business routine for performing the clerical function that could reasonably be relied upon to avoid errors in its performance, and hiring personnel tasked to maintain the docketing system, the unforeseen error occurred. Therefore, reliance upon such employee represented exercise of due care.

The error in the docketing system was the result of changes in the Strategic Administrative Specialist personnel necessitated by complications associated with a high risk pregnancy. This is clearly an unforeseeable circumstance. It is respectfully urged that this factual situation is precisely the situation for which the Director was given the statutory authority to reinstate patents that expired for unavoidable delay in payment of the maintenance fee. The present situation is exactly the situation expressly identified in Section 2590 I. of the MPEP as eligible for reinstatement.

If the docketing system had functioned properly, the Patentee would have paid the second maintenance fee. The '131 Patent is directed to a product of the Patentee's company, and the

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Patentee declares that the only reason the maintenance fee was not paid was the unforeseen error in the docketing system. The entire delay in payment of the second maintenance fee is due to the unforeseen error in the docketing system.

On the same day the Patentee discovered that the second maintenance fee had not been timely paid, he instructed the undersigned to take whatever steps were available to reinstate the '131 Patent. The undersigned has diligently pursued marshalling the facts and drafting the present Petition, and has enjoyed assertive and timely cooperation from the Patentee and related parties, without any delays.

### Conclusion

At the time the '131 Patent issued, the Patentee and owner of the '131 Patent was the sole shareholder of NAP, a very small company in Washington State that practices the invention protected by the '131 Patent. The Patentee exercised due diligence in hiring and training personnel to set up and maintain a docketing system to ensure timely payment of the maintenance fees. Reasonable reliance on the system may be inferred by the timely payment of the first maintenance fee.

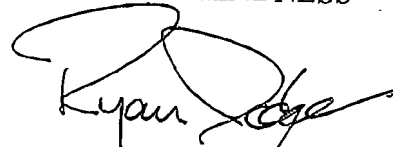
Between the time the first maintenance fee was paid and the time the second maintenance fee was due, the administrative responsibilities for the docketing system changed hands due to personnel changes necessitated for medical reasons. The Patentee exercised due diligence in hiring new staff tasked with maintaining the docketing system. Despite the reasonably prudent efforts of the Patentee, "unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occur[ed] a failure," and the second maintenance fee was not timely paid.

The Patentee first became aware of the expiration of the '131 Patent on November 16, 2012. The Patentee contacted patent counsel on the same day and instructed patent counsel to undertake reinstatement of the '131 Patent.

It is believed that all of the requirements under 37 CFR 1.378 for acceptance of delayed payment of the maintenance fee for an expired patent are satisfied, and the Director is respectfully petitioned to accept the delayed payment and to reinstate the '131 Patent.

Respectfully submitted,

CHRISTENSEN O'CONNOR  
JOHNSON KINDNESS<sup>PLLC</sup>



Ryan E. Dodge, Jr.  
Registration No. 42,492  
Direct Dial No. 206.695.1724

RED:red/ctg

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Applicant: David W. Bergevin Attorney Docket No.: DWBE551424  
Application No.: 09/434,353 Patent No.: 6,346,131  
Filed: November 3, 1999 Issued: February 12, 2002  
Title: FERTILIZER COMPOSITIONS FOR ADMINISTERING  
PHOSPHATES TO PLANTS

DECLARATION OF DAVID W. BERGEVIN

I, David W. Bergevin, hereby declare as follows:

1. I formed and founded Northwest Agricultural Products, Inc., a Washington corporation ("NAP"), in 1989; and I have been the sole shareholder and president of NAP since its formation.
2. By 1999, my research into improved phosphate application had resulted in the invention disclosed and claimed in U.S. Patent No. 6,346,131 (the '131 Patent), of which I am the sole inventor.
3. The technology claimed in the '131 Patent is practiced by NAP and is directed to an important product line of NAP.
4. I have not assigned the '131 Patent to any other party.
5. Upon issuance of the '131 Patent, I was advised by patent counsel, Mr. Floyd Ivey, of the schedule of maintenance fees due, and told that he would notify me before the due date. He also advised me to establish a reminder system for these dates.
6. In 2002, after the '131 Patent issued, my office manager at that time, Kyle Hartmeier, set up a calendar system that included docketing the maintenance fee payments for the '131 Patent and other intellectual property matters using the MS Outlook® scheduling system.
7. In 2005, NAP promoted Ms. Meg Kates (now Meg Maas) to Strategic Administration Specialist. Her duties included maintaining the docketing system that was transferred to her from Mr. Hartmeier.
8. In 2006, Ms. Maas had a high risk pregnancy that resulted in her electing to leave her position as Strategic Administration Specialist. We therefore hired Michelle Stewart as a

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Strategic Administration Specialist, and the docketing system was transitioned from Ms. Maas to Ms. Stewart. A valued employee, Ms. Maas elected to remain with NAP on a part-time basis working from home, and was allowed to keep the laptop that she was using at the company to facilitate this arrangement.

9. I first learned through a third party that the second maintenance fee for the '131 Patent had not been paid and that the '131 Patent had therefore expired on November 16, 2012. I contacted my patent attorney on the same day with instructions to try to recover the '131 Patent as quickly as possible.

10. The '131 Patent is important to NAP; and if the docketing system had worked properly, I would have timely paid the second maintenance fee.

I hereby declare that all statements made herein of my knowledge are true, and that all statements made on information and belief are believed to be true, and that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the above-identified application or any patent that issues therefrom.

Respectfully submitted,

Dated: 11/29/2012

  
David W. Bergevin

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Filed: November 3, 1999 Issued: February 12, 2002  
Title: FERTILIZER COMPOSITIONS FOR ADMINISTERING  
PHOSPHATES TO PLANTS

DECLARATION OF MEG K. MAAS

I, Meg K. Maas, hereby declare as follows:

1. I was hired by Northwest Agricultural Products, Inc., a Washington corporation ("NAP"), in 2004. At the time I was hired, my name was Meg Kates.
2. In 2005, I was promoted to Strategic Administration Specialist for NAP.
3. My responsibilities as Strategic Administrative Specialist for NAP included the maintenance and renewal of certain trademarks and patents, including U.S. Patent No. 6,346,131 (the '131 Patent).
4. In 2006, I unexpectedly and abruptly had to leave that position due to complications I experienced associated with a high risk pregnancy.
5. I continued working from home on a part-time basis with NAP into 2007, in part to aid in the transition of responsibilities to my successor, Michelle Stewart. To facilitate this arrangement, I was allowed to keep my computer after transferring information to Ms. Stewart. My calendar was shared with Ms. Stewart for two years. Unfortunately, I have recently learned that the patent maintenance fee information did not transfer to Ms. Stewart because it was at the time three years out.

I hereby declare that all statements made herein of my knowledge are true, and that all statements made on information and belief are believed to be true, and that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the above-identified application or any patent that issues therefrom.

Dated: 1/05/2012

Respectfully submitted,

Meg K. Maas

DWBE551424-MKM-DEC.DOC

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: David W. Bergevin Attorney Docket No.: DWBE551424  
Application No.: 09/434,353 Patent No.: 6,346,131  
Filed: November 3, 1999 Issued: February 12, 2002  
Title: FERTILIZER COMPOSITIONS FOR ADMINISTERING  
PHOSPHATES TO PLANTS

**FAX RECEIVED**

DEC 05 2012

DECLARATION OF MICHELLE STEWART**OFFICE OF PETITIONS**

I, Michelle Stewart, hereby declare as follows:

1. I was hired by Northwest Agricultural Products, Inc., a Washington corporation ("NAP"), in 2006 as a Strategic Administrative Specialist to replace Meg Kates.
2. As a Strategic Administrative Specialist, my duties include regulatory compliance regarding registration of intellectual property.
3. After November 16, 2012, I reviewed the docketing system and learned for the first time that the maintenance fee payment dates for U.S. Patent No. 6,346,131 (the '131 Patent) were not in my docketing system. I now believe the docket information did not get transferred during the transition in 2006 and that this error was not discovered until November 16, 2012.
4. I have also recently conducted a search of NAP records and can find no letter or other reminder after the date of payment of the first maintenance fee regarding the second maintenance fee for the '131 Patent.

I hereby declare that all statements made herein of my knowledge are true, and that all statements made on information and belief are believed to be true, and that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the above-identified application or any patent that issues therefrom.

Respectfully submitted,

Dated: 11-29-2012

  
Michelle Stewart

DWBE551424-M3-DEC.DOC

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